

to establish or increase special rates for a category of agency employees. The request must include a certification by the authorized agency official that the requested special rates are necessary to ensure adequate staffing levels to accomplish the agency's mission.

(b) The authorized agency official is responsible for submitting complete supporting data for any request for new or higher special rates. OPM may require that the supporting data include a survey of prevailing non-Federal pay rates in the relevant labor market.

(c) OPM may coordinate an agency special rate request with other agencies that have similar categories of employees. OPM may designate a lead agency to assist in coordinating the collection of relevant data. Each affected agency is responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate, unless the agency determines that a category of its employees will not be covered by the proposed special rate schedule, as provided in § 530.303(c).

§ 530.306 Evaluating agency requests for new or increased special rates.

(a) In evaluating agency requests for new or increased special rates, OPM may consider the following factors:

(1) The number of existing vacant positions and the length of time they have been vacant;

(2) The number of employees who have quit (*i.e.*, voluntarily left Federal service), including, when available, a subcount of the number of employees who quit to take a comparable position offering higher pay;

(3) Evidence to support a conclusion that recruitment or retention problems likely will develop (if such problems do not already exist) or will worsen;

(4) The number of vacancies an agency tried to fill, compared to the number of hires and offers made;

(5) The nature of the existing labor market;

(6) The degree to which an agency has considered and used other available pay flexibilities to alleviate staffing problems, including the superior qualifications and special needs pay-setting authority in 5 CFR 531.212 and recruit-

ment, relocation, and retention incentives under 5 CFR part 575;

(7) The degree to which an agency has considered relevant non-pay solutions to staffing problems, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(8) The effect of the staffing problem on the agency's mission;

(9) The level of non-Federal rates paid for comparable positions. Data on non-Federal salary rates may be supplemented, if appropriate, by data on Federal salary rates for comparable positions established under a non-GS pay system; and

(10) The level of any locality pay authorized under 5 U.S.C. 5304 and any nonforeign area cost-of-living allowance authorized under 5 U.S.C. 5941(a)(1) for the area involved.

(b) In determining the level at which to set special rates, OPM may consider the following factors:

(1) The pay levels that, in OPM's judgment, are necessary to recruit or retain an adequate number of qualified employees based on OPM's findings with respect to the factors set forth in paragraph (a) of this section;

(2) The dollar costs that will be incurred if special rates are not authorized;

(3) The level of pay for comparable positions; and

(4) The need to provide for a reasonable progression in pay from lower grade levels to higher grade levels to avoid pay alignment problems (*e.g.*, such as might result from applying the two-step promotion rule in 5 U.S.C. 5334(b)).

(c) No one factor or combination of factors specified in paragraph (a) or (b) of this section requires OPM to establish or increase special rates or to set special rates at any given level.

[70 FR 31287, May 31, 2005, as amended at 76 FR 68634, Nov. 7, 2011]

§ 530.307 OPM review and adjustment of special rate schedules.

(a) OPM may review an established special rate schedule at any time to determine whether that schedule should

be increased, decreased, or discontinued, taking into account the circumstances listed in § 530.304(b) and the factors listed in § 530.306 that led to establishing the schedule. An authorized agency official may request that OPM conduct such a review of one or more special rate schedules.

(b) OPM may designate lead agencies to assist in the review of designated special rate schedules and to coordinate the collection of relevant data. Each affected agency is responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(c) OPM will adjust a special rate schedule by determining the amount of the special rate supplement to be paid on top of the current GS rate for each rate range within the schedule. OPM will determine the extent to which special rate supplements are to be adjusted (increased or decreased), if at all, and when the special rate supplements are to be adjusted. As provided in 5 U.S.C. 5305(d), special rate schedule adjustments made by OPM have the force and effect of statute.

(d)(1) For special rate schedules computed by applying a fixed-percentage supplement on top of each GS rate within a rate range, OPM may require that a change in the underlying GS rate automatically results in an adjusted special rate schedule, unless OPM determines that an adjustment in the supplement percentage is appropriate for one or more special rate schedules.

(2) For special rate schedules computed by applying a fixed-dollar supplement on top of each GS rate within a rate range, OPM may require that special rate supplements generally be adjusted to reflect the increase in GS rates, unless OPM determines that a different adjustment is appropriate for one or more special rate schedules.

(e) If OPM determines that a special rate schedule, or a rate range within a special rate schedule, is no longer needed to ensure satisfactory recruitment or retention of qualified employees, OPM may discontinue the schedule or rate range. Consistent with § 530.303(d), if all employees and positions covered by a special rate schedule or rate range are entitled to a higher

rate of basic pay, the schedule or rate range (as applicable) will be automatically discontinued.

(f) OPM may change the established conditions for coverage under a special rate schedule at any time based on a reevaluation of the circumstances and factors that led to establishing the schedule. Expansion of coverage is equivalent to establishing a special rate schedule for a category of affected employees. Reduction of coverage is the equivalent of discontinuing a special rate schedule for a category of affected employees.

(g) When a special rate schedule is adjusted or discontinued, or when there is a change in a schedule's coverage criteria, the rate of pay for affected employees must be set as provided in §§ 530.321 through 530.323.

§ 530.308 Treatment of special rate as basic pay.

Except as otherwise specifically provided under other legal authority, a special rate is considered a rate of basic pay only for the following purposes:

(a) The purposes for which a locality rate is considered to be a rate of basic pay in computing other payments or benefits to the extent provided by 5 CFR 531.610, except as otherwise provided in paragraphs (b) and (c) of this section;

(b) Computation of foreign area post differentials under 5 U.S.C. 5925(a) and danger pay allowances under 5 U.S.C. 5928; and

(c) Application of pay administration provisions for prevailing rate employees which consider rates of basic pay under the GS pay system in setting pay (except as otherwise provided in 5 CFR part 532), subject to the requirement that, if the employee's actual special rate would not apply at the official worksite for the prevailing rate position, a special rate may be used only if it is a corresponding special rate on a special rate schedule that would cover the employee if his or her GS position of record were located at the same official worksite as the prevailing rate position, consistent with the geographic conversion rule in 5 CFR 531.205.

[70 FR 31287, May 31, 2005, as amended at 76 FR 68634, Nov. 7, 2011]